Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1921

TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND,

Petitioner,

v.

WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP, *et al.*,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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ARGUMENT

This supplement to the Petition for Certiorari is presented pursuant to Rule 24 and in response to a question raised regarding the timeliness of the Petition. Relying on *Department of Banking, Etc. v. Pink*, 317 U.S. 264 (1942), the Clerk's Office of this Court has suggested that a final judgment arose when the Court of Appeals of

Maryland issued its Opinion.[1] This is not the case as a final judgment of the Court of Appeals of Maryland can only occur when a mandate of that Court has issued.

This conclusion is supported by *Department of Banking, Etc. v. Pink, supra.* In that case, the Petitioner urged that an amendment to the order of the Court of Appeals of New York extended the time in which to apply for certiorari. In rejecting this argument, this Court indicated that a final judgment arises when the record reveals that nothing need ". . . to be done by the lower Court except a ministerial act of entering judgment on the remittitur."[2] *Id.*, at 268. This determination is made by reference to the record and local law. *Richfield Oil Corp. v. State Board of Equalization,* 329 U.S. 69 (1946). In Maryland, the mandate is ". . . the sole formal evidence of the final action of the Court of Appeals." *Klopfer v. Weber,* 264 Md. 419, 421, 286 A.2d 776, 778 (1972), Maryland Rules of Procedure, Rule 876. Prior to its issuance, the lower Court cannot rely on the Opinion which the mandate would render a final judgment. Also, in practice the Court of Appeals of Maryland has on occasion withdrawn and modified its opinion prior to the issuance of its mandate. Thus, unlike the situation in the *Department of Banking* case, the Opinion of the Court of Appeals of Maryland does not provide the lower Court with authority to take

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[1]If this is correct, the Petition was not timely.

[2]Apparently this Court wished to preclude finally a former practice of permitting the time period for filing a petition for certiorari to run from the date the lower court entered judgment in response to the order of the appellate court. *Id.*, at 267. This is not the case at bar as the lower Court has yet to issue any order in response to the mandate of the Court of Appeals of Maryland.

any action. It is only upon the issuance of the mandate that the lower Court can act. That action represents the actual disposition of the case by the Court of Appeals of Maryland. It is its final judgment. Therefore, the Petition is timely.[3]

Respectfully submitted,

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[3]In cases from other jurisdictions that have appellate court practices similar to Maryland's, this Court has held that the time for filing a petition for certiorari runs from the date the mandate issued or the clerk entered judgment, and not from the earlier date when the opinion or decision issued. *Puget Sound Power and Light Co. v. King County*, 264 U.S. 22, (1924) (appeal from the Supreme Court of the State of Washington); *Commissioner v. Bedford's Estate*, 325 U.S. 283 (1945) (appeal from the United States Circuit Court of Appeals for the Second Circuit.

APPENDIX A

MARYLAND RULES OF PROCEDURE

Rule 876. Mandate.

a. *To Evidence Order of This Court.*

The order of this Court dismissing an appeal or affirming or reversing in whole or in part, or modifying the judgment from which the appeal was taken, or awarding a new trial, or entering a final judgment pursuant to Rule 875 (Final Judgment in This Court) shall be evidenced by the mandate of this Court which shall be certified under the seal of this Court by the Clerk. It shall not be necessary for any formal order or judgment other than the mandate to be signed or transmitted to the lower court.
(Order Dec. 6, 1949 (The Daily Record, 12/8/49).)

b. *When to Be Issued.*

Unless otherwise ordered by this Court, the mandate shall be issued as of course by the clerk upon the expiration of thirty days after the opinion of this Court has been filed or the order or judgment of this Court has been entered, and shall be transmitted by him to the appropriate court.
(Amended June 16, 1975, effective July 1, 1975.)

* * *

d. *Effect of Mandate.*

When the mandate has been transmitted the appropriate court shall proceed according to the tenor and directions thereof.
(Art. 5, § 67; amended June 16, 1975, effective July 1, 1975.)

APPENDIX B

Rule 24. Brief in Opposition – Reply – Supplemental Briefs

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5. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending calling attention to new cases or legislation or other intervening matter not available at the time of his last filing.

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